REGULATING THE FUNDING OF ELECTION CAMPAIGNS IN NEW ZEALAND: 
A CRITICAL OVERVIEW.

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1: Introduction

The funding of election campaigns (or "campaign financing", as it is known in the United States) is a topic which has generated heated debate in a great many countries. Given the complexities of this issue, and the intense disagreement it has created in overseas jurisdictions, the most remarkable feature of the regulatory regime New Zealand has chosen to adopt may be the relative lack of attention it has received. This fact may in large part be attributed to a more general truth: election campaigns in New Zealand remain comparatively cheap events. For example, the New Zealand Electoral Commission reports that during New Zealand's 2002 general election campaign, the political parties and their individual candidates spent a declared total of $10,123,977. A little over 2 million votes were cast in that election, meaning that about $5 was spent by the primary electoral contestants for every voter who participated. While the business of making comparisons is complicated by the different time periods, and the various types of expenses, that must be disclosed in each particular country, this figure appears to be

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significantly lower than the amounts spent on campaigning in most other developed Western democracies.¹

There are in turn a number of structural factors that might account for the fact that spending on New Zealand’s election campaigns has risen to the levels experienced elsewhere. New Zealand’s smaller population size reduces the amount of money required for the electoral contestants to communicate with the voters, and may help to foster a more direct, less cost-intensive style of campaigning. Equally, the smaller size of the country’s economy not only means that there are fewer resources available from which to fund election campaigns, but also that the potential rewards for gaining public power are less — reducing the incentives for large-scale spending aimed at achieving electoral victory. It is also relatively easy to gain access to government decision makers, meaning it is not necessary to attempt to “buy” access through the making of campaign donations. Election campaigns in New Zealand tend to be short — lasting a matter of weeks rather than months — and are held with comparative frequency due to the triennial election cycle.

In addition to these structural features of New Zealand’s electoral process, the Electoral Act 1993 has explicitly sought to restrict expenditures by candidates and the political parties through imposing a fixed spending cap on their campaigns. Equally, the presence of strict restrictions on the use of the broadcast media to carry political advertising limits the electoral participants’ spending on the most expensive means of communicating with the voters. This regulatory approach has as its primary focus the

¹ For example, expenditure reports filed after the 2000 general election in Canada reveal that the political parties and their candidates spent well over NZ$7 per vote on their campaigns. See the searchable database at <http://www.elections.ca> (visited 16 June, 2003)
creation of a relatively level playing-field amongst electoral participants. New Zealand has therefore chosen to respond to the concern that disparities in economic power may undermine the presumptive equality of participants in its democratic processes by attempting to restrict the electoral contestants’ demand for money, rather than by seeking to control the supply of funds to the electoral contestants through limits on the donations that they may receive. This regulatory choice has contributed to containing the overall influence of campaign spending in New Zealand, by preventing the kind of “arms race” in electoral expenditures that has occurred in countries without such limits.

Finally, aside from these general structural and regulatory factors, another reason why the general issue of campaign funding has provoked relatively little discussion in New Zealand is the minor role played by the judiciary, at least when viewed alongside such countries as Australia, Canada, and the USA. The absence of an entrenched Bill of Rights means the courts have no constitutional, or “higher law”, power to review the impact that the regulation of campaign funding may have on individual rights. As such, the final decision about how the funding of New Zealand’s elections should be regulated

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2 See, e.g., Australia Capital Television v Commonwealth (1992) 177 CLR 166


5 While the New Zealand Bill of Rights Act 1990, s 14, does “guarantee” the individual right to freedom of expression, s 4 expressly states that the rights enumerated in the Act cannot render any competing statutory provision unenforceable or void.
remains the sole preserve of Parliament. This lack of judicial oversight of Parliament’s activities means that New Zealand has escaped the sort of confusion that arises when a country’s legislature and its courts disagree over whether some regulatory measure is constitutionally permissible.

However, notwithstanding the above comments, it is inconceivable that any democracy could remain completely untroubled by the issue of the role that money ought to play in its electoral processes. As such, despite the relative quietude of New Zealand’s experience, the issue of campaign funding has emerged from the background in a number of different ways. In particular, the adoption of a Mixed Member Proportional (MMP) voting system forced New Zealand to reconsider how campaign funding ought to be regulated in this new electoral environment. The move to MMP is further discussed below, so for now it is sufficient to note that this reform of New Zealand’s voting system also ushered in a general change in its electoral processes. Prior to this watershed, New Zealand’s electoral system (and the laws which governed this) had long displayed the imprint of New Zealand’s colonial heritage. The system of electoral representation used in the United Kingdom was adopted wholesale into New Zealand when local

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6 This is not to say that the courts have played no role in shaping New Zealand’s electoral process; see J. Boston et al, “Courting Change: The Role of the Judiciary in Altering and Electoral System”, 8 Public Law Review 229 (1997).

7 For an explanation for why this is so, see Andrew Geddis, “Three Conceptions of the Electoral Moment”, (2003) 27 Australian Journal of Legal Philosophy 53.

representation was first introduced in 1852, and even after New Zealand gained full political independence in 1947, its regulatory approach to most electoral issues (including that of campaign funding) continued to closely mirror the United Kingdom’s. Therefore, it was not until 1986, when the Royal Commission on the Electoral Process released its report questioning whether this state of affairs was appropriate, that debate about the form of New Zealand’s electoral system really coalesced. Another decade then passed before the adoption of MMP fully moved New Zealand’s electoral processes out of the United Kingdom’s shadow, and gave the country its own “home-grown” form of representation.

In what follows, this article first examines the main features of New Zealand’s present system of campaign funding regulation. It then considers in greater depth some particular problems with this system that have come to the fore in recent years, and critically evaluates a number of proposals that have been made to deal with these problems. The aim of this article is not necessarily to push any one particular line of reform (although I do express some views on which proposals for change I regard as being more meritorious than others). Rather, it is designed to provide something of an overview of this area of law, the way in which the various parts fit together into a whole, and thus the need to consider all parts of the regulatory system when seeking to reform any one aspect of it.

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9 New Zealand Constitution Act 1852 (Imp.)

10 Statute of Westminster Adoption Act 1947 (N.Z.)

2: The Present System of Regulating Campaign Funding

This section first reviews the general restrictions on electoral spending in New Zealand aimed at preventing the overt corruption of the political process. It then examines the restrictions placed on the campaign spending of the political parties, individual candidates, and those “third parties” who may wish to be involved in the electoral process. Finally, this section considers the special restrictions which are placed on the use of the broadcasting media for electoral purposes.

- General Restrictions on Electoral Spending

The passage of the Corrupt Practices Prevention Act 1881 outlawed various forms of electoral spending — such as bribing or “treating” voters — so as to preserve the integrity of the electoral process. These offences continue to exist today, and it is therefore a “corrupt practice” for anyone to “buy” votes directly from electors through bribery,\(^\text{12}\) or to pay for “food, drink, entertainment or provision” for the purpose of swaying an elector’s vote.\(^\text{13}\) It is also an “illegal practice” to knowingly provide money “for any purpose which is contrary to the provisions of [the Electoral Act 1993].”\(^\text{14}\) In addition, a rather odd prohibition on paying an elector to exhibit an election notice on their house or land remains on the statute books,\(^\text{15}\) the rationale for which is unclear.

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\(^\text{12}\) Electoral Act 1993, s.216.

\(^\text{13}\) ibid. s.217.

\(^\text{14}\) ibid. s.220.

\(^\text{15}\) ibid. s.219.
However, these provisions are rarely invoked,\textsuperscript{16} reflecting the overall fact that New Zealand appears to be relatively free of overt corruption, both in its electoral system and its general processes of governance.\textsuperscript{17}

\begin{itemize}
  \item \textbf{Regulation of the Funding of Political Party Campaigns.}
\end{itemize}

Right up until the 1990s, New Zealand's electoral law placed virtually no restrictions on either the funding of, or spending on, the national political parties' election campaigns. This \textit{laissez faire} attitude towards the electoral activities of the political parties was the product of two progressively illusory assumptions. The first was that the individual candidate, rather than the political party he or she represented, was the primary campaigner in New Zealand's electoral contests, and so the legal regulation of campaign funding should be aimed at the local constituency rather than the national level. The second assumption was that the political parties were, for legal purposes, private unincorporated associations which only incidentally involved themselves in the public political life of the community.\textsuperscript{18} As a consequence of these twin assumptions, few legal controls were placed on the parties' financial activities, and there was no requirement for

\textsuperscript{16} The last case in which bribery of a voter was alleged was the \textit{Bay of Islands Election Petition} (1915) \textit{34 NZLR} 578.

\textsuperscript{17} Transparency International's Corruption Perceptions Index 2002 ranks New Zealand the second-equal least corrupt country of all those surveyed; see <http://www.transparency.org/cpi/2002/cpi2002.en.html>

\textsuperscript{18} Peters v Collinge [1993] \textit{2 NZLR} 554, 575 ("...for legal purposes, political parties are private bodies. They have no statutory or public duties.") See also Margaret Wilson, "Political Parties and Participation", in Alan Simpson (ed), \textit{The Constitutional Implications of MMP} (Occasional
them to register, or to file public accounts. This meant that the fundraising and spending practices of the political parties were largely shielded from any public scrutiny for most of New Zealand’s electoral history.

These twin views became increasingly untenable as nationwide political parties grew to become the primary actors on the political stage. And so by the time that the Royal Commission on the Electoral System issued its wide-ranging report in 1986, it was able to confidently state that:

It is the political parties inside and outside Parliament that in reality present the electorate with a choice of Government. They provide the candidates and prepare the policies between which the voters choose. ... All these changes mean that the principal purpose of elections is now in fact to enable the people to decide in accordance with the electoral law which of the competing political parties will provide the Government.  

Based on its view of the centrality of the political parties’ role in the electoral system, the Royal Commission recommended that New Zealand should adopt an MMP voting system based on the (then) West German model. Under this voting system, each voter has two votes: one to be cast for a local constituency candidate; the other for the political party that she prefers. However, it is the latter “Party Vote” that is crucial under MMP, as the overall make up of Parliament is (in the final analysis) determined by the proportion of this received by each political party. 

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Publication No. 9, School of Political Science and International Relations, Victoria University Wellington, 1998) 169.

19 Towards A Better Democracy, supra n.11, at 6, paras. 1.8-1.9.

20 ibid., at 63-64.

21 The New Zealand Electoral Commission provides a description of how MMP operates at <http://www.elections.govt.nz/elections/esyst/govt_elect.html>. See also G. Palmer and M.
MMP thus represented a conscious decision to formally recognise and institutionalise the
political parties’ role as the primary vehicles through which the public’s representatives
are selected.22

Following the release of the Royal Commission’s report, a two-step referenda
process was held in which a majority of the electorate voted in favour of adopting
MMP.23 The result of the second referendum then automatically triggered the enactment
of the Electoral Act 1993. This legislation put in place the present MMP voting system,
and incorporated some of the changes to the legal status of political parties recommended
by the Royal Commission. As such, any political party wishing to contest the party vote
in an election is now required to register with the Electoral Commission,24 to provide the
Commission with a list of their current members (if so requested),25 and to follow a
“democratic procedure” in the selection of candidates to represent the party in an
election.26

In 1995, a series of amendments to the Electoral Act 1993 made three important
changes to the regulatory framework governing the funding of the political parties’

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Palmer, Bridled Power: New Zealand Government Under MMP (Auckland, Oxford University

22 Towards A Better Democracy, supra n.11, at 61-62.

23 See generally Keith Jackson and Alan McRobie, New Zealand Adopts Proportional

24 Electoral Act 1993, s 62(1). In order to be registered, a political party need only show that it has
at least 500 current financial members, and state that it intends contesting the next election; ibid.,
ss 63; 71A.

25 ibid., s 66(3).

26 ibid., s. 71.
election campaigns. First, an overall cap was placed on the nationwide spending of a registered political party on advertising its election campaign. Secondly, each registered political party was required to make a public return setting out its expenditure on the election contest. Finally, the changes mandated the disclosure of the identity of some (but as shall be seen, not all) sizeable donors to each political party. These reforms stemmed from recommendations made by the Royal Commission, on the grounds that “if elections are to be fair and our democracy is to prosper, it is important that the effects of [economic] inequalities are minimised.” They continue control the funding of the political parties election campaigns, and as such, each shall be considered in turn below.

A registered political party is limited to spending a total of $1 million, plus an additional $20,000 for each individual constituency seat it is contesting, on “election expenses”. The definition of election expenses incorporates any expenditure made on an “election activity” — defined as all advertising of any kind, radio or television broadcasting, or published material, which encourages (or appears to encourage) voters to vote for the party (or not to vote for any other party). The activity must also occur in the three months preceding an election (although if the activity is paid for outside of these three months, it still falls within the spending limits). In theory, therefore, a political party contesting all 69 electorates at the 2002 election was restricted to spending a

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27 Electoral Amendment Act (No. 2) 1995, s 79.

28 Towards A Better Democracy, supra n.11, p 190, para. 8.28.


30 ibid., s 214B(1). The definition does, however, exclude any spending on advertising which relates exclusively to the election of any of the party’s individual candidates, ibid.

31 ibid., s 214B(1) (definition of “election activity”).
maximum of $2.38 million on advertising its campaign in the three month period leading up to the polling day. However, there are no statutory restrictions on how much a party can spend on advertising outside of this three month pre-election period. Nor is there any limit on how much a party can spend on travel or conducting opinion polls within the three months.\textsuperscript{32} What is more, the cost of activities such as convening focus groups to test reactions to policy positions, or hiring campaign consultants, will also fall outside this limit — as long as these activities are kept separate from the development or conduct of the party’s advertising campaign.\textsuperscript{33}

Following an election, the secretary of each registered political party is required to file a return of their election expenses with the Electoral Commission.\textsuperscript{34} Although the statute does not specify the form this return must take, New Zealand’s Court of Appeal has held that the Electoral Commission can require the parties to provide a breakdown of their election expenses in terms of the various areas in which these are made.\textsuperscript{35} Thus, a registered party must publicly reveal how much it has spent on each of the following categories: advertising; broadcasting; and general publication of notices, posters, billboards, etc. In addition, it must list each of the persons to whom payment was made in respect of each of these categories, as well as how much was paid to them. This return

\textsuperscript{32} ibid., s 214B(1)(e) (definition of “election expense”).

\textsuperscript{33} Although the statutory provisions do not specifically say so, the Electoral Commission regards “the [entire] cost of developing and conducting an advertising campaign (including production costs, commissions, and research undertaken as part of the development of the advertising campaign)” as falling within the spending limits. See Electoral Commission, \textit{Guide to Election Expenses for Registered Political Parties, 1999 General Election} \textit{4} (1999).

\textsuperscript{34} Electoral Act 1993, s 214C(1).

\textsuperscript{35} \textit{Electoral Commission v Tate} [1999] 3 NZLR 174, 185.
must also be accompanied by an independent auditor’s report, stating whether (in the
auditor’s opinion) the party’s return is an accurate reflection of the actual expenses
incurred by the party.36

Political parties are also required to disclose the identity of some of the donors who
fund their activities. The secretary of a registered party is required to make an annual
return to the Electoral Commission, listing every “party donation” that it has received in
the previous calender year.37 A party donation is one received by a person or body
involved with the administration of the party’s affairs that by itself, or in the aggregate,
exceeds $10,000.38 The return must include the total value of any such party donation
and, where the identity of the donor is known, the name and address of the donor.39
However, where the donor’s identity is not known to any candidate of the party, or any
person involved with the administration of the party,40 the contribution need only be
listed as coming from an anonymous source.41 The party’s auditor must also submit a
report on the party’s annual return, stating whether or not he is of the opinion that the
return fairly reflects the party donations received by the party.42

The shortcomings of these disclosure provisions will be discussed in the next
section. But aside from problems with this aspect of the controls on party fund raising,

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36 Electoral Act 1993, s 214C(1).
37 Electoral Act 1993, s 214G(1).
38 ibid., s 214F
39 ibid., s 214G(1)(a)(i).
40 ibid., s 3(1) (definition of “anonymous”); see infra nn.91-92 and accompanying text.
41 ibid., s 214G(1)(a)(ii).
42 ibid., s 214H(1)&(2).
the rules governing party spending seem to have been generally followed. In point of fact, the expenditure restrictions place only a theoretical limit on the political parties’ activities, for as yet no political party has reported spending up to the full amount that is allowed to under the legislation. So the $2.38 million cap still represents a greater amount than any party has yet been able to raise to pay for their campaign — or, at the very least, has chosen to spend on their campaign. Here the structural constraints on campaign spending in the New Zealand electoral context, discussed in the introduction to this paper, would seem to be relevant. Because New Zealand is not a “high cost” campaigning environment compared to other democracies, parties are able to gain electoral success without necessarily having to spend excessive amounts of money. In turn, this may somewhat reduce the incentives for the parties to try and raise and spend sums in excess of the amount mandated by the governing legislation.

- Regulation of the Funding of Individual Candidate Campaigns.

By contrast with the longstanding laissez faire attitude displayed towards the political parties, controls on the campaign funding of individual candidates have existed since 1895. In that year, limits were placed on the amount that candidates could spend on seeking election, and they were also required to file a post-election return setting out

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43 Following the 2002 general election campaign, the ACT Party reported spending the most of all the registered parties at $1.6 million.

44 So, for instance, in the 1999 election, the National Party’s declared spending was almost twice as great as was the Labour Party’s, yet Labour out-pollled National by 38.74 per cent to 30.50 per cent. Similarly, in 2002, the ACT Party spent more than five times as much on its campaign than did the New Zealand First Party, only for the latter party to receive 10.4% of the vote to ACT’s 7.1%.
these election expenditures, as well as the sources of their funding. These restrictions have remained in place throughout New Zealand’s subsequent electoral history, and have been carried over into the present regulatory regime contained in the Election Act 1993.

According to the provisions in this legislation, a candidate may incur no more than $20,000 in “election expenses”, defined as being expenses incurred by or on behalf of a candidate for an “election activity”. In relation to an individual candidate, an “election activity” is defined as any kind of advertising, any radio or television broadcasting, or any publication or distribution of any notice, poster, or billboard, which is carried out by the candidate’s campaign. In addition, the activity must relate solely to the candidate in his or her capacity as a candidate for the district, must relate exclusively to his or her campaign, and must take place in the three months before the election is held. Therefore, as with the political parties, the legislation restricts only the amount that a candidate may spend on advertising his or her candidacy during the three months preceding an election. However, by contrast with the provisions governing political party spending, the limits apply only to expenditures on advertising which “relates

45 See Corrupt Practices Prevention Amendment Act 1895, ss 8, 12.

46 Electoral Act 1993, s 213(1).

47 Electoral Act 1993, s 213(1), definition of “election activity”.

48 ibid.

49 As with the political parties, the definition of “election expense” is in terms of when the “election activity” occurs, not when the payment for it is made. See ibid., s 213(1)(b). An amendment to the Electoral Act in 2002 has also slightly broadened the definition to include spending by a candidate on “negative” or “attack” advertising aimed against a rival candidate. See ibid, s 213(1)(c)(ii).
exclusively” to the candidate’s election campaign, rather than to all advertising which broadly “encourages” voters to vote in a particular way.\(^5^0\)

The requirement that some particular spending “relate exclusively to the campaign for the return of the candidate” before qualifying as an “election expenditure” has provoked some confusion.\(^5^1\) The Electoral Act 1993 tries to clarify the issue somewhat by apportioning any election expenses incurred on any election activity relating to the campaigns of two or more candidates between all of the candidates concerned.\(^5^2\) However, the status of activities which have the effect of both encouraging voters to vote for a candidate, and which also serve some other purpose (such as promoting an issue in a referendum held concurrently with an election), still remains unclear. There is some suggestion from the courts that in such a case the portion of the spending that is connected with advertising the candidate’s campaign ought to be counted as an election expenditure,\(^5^3\) but such a conclusion is necessarily speculative as the issue has yet to be addressed head on.

The consequence of this uncertainty is that, in practice, a determined candidate can spend more than the statutory limit on his or her campaign. For example, shortly before the 1996 election the leader of the ACT Party, Richard Prebble, who was also a candidate for the Wellington Central electorate, produced a book bearing the title *It’s Time To ACT*, which promoted his political vision for New Zealand. During the three month campaign period a sum significantly larger than $20,000 was spent on publicising

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\(^5^0\) Compare with the provisions for political parties at *supra*, n.30.


\(^5^2\) *Electoral Act 1993*, s 214(1)&(2).
this book nationally, as well as within the particular electorate in which he was standing. But as this advertising neither related to him solely in his capacity as a candidate, nor related exclusively to his campaign for election, it appeared to fall beyond the statutory spending limits. In a similar way, although on a much smaller scale, incumbent Members of Parliament have occasionally sent “information packs” to voters shortly before the election date, detailing their activities over their previous term of office. Because these packs purport to relate to the candidate in their capacity as a Member of Parliament, the cost of producing and sending them falls outside of the statutory spending restrictions.54

The uncertainty over the sorts of spending that constitute an “election expense” also undermines the requirement that a candidate file a post-election return laying out the election expenses incurred by that candidate during the campaign.55 As it is often debatable whether some spending on a particular activity constitutes an election expense, candidates have room to be somewhat creative in the returns that they file so as to ensure that their reported spending falls beneath the $20,000 maximum. Candidates are also required to list in this post-election return any “election donations” that they may have received.56 An election donation is defined as any donation, or series of donations, made to the candidate’s campaign that in the aggregate exceeds $1,000.57 Where the identity of the source of an election donation is known, the return must list the name and address of

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54 Electoral Act 1993, s 213(1) (definition of “election activity”)
55 ibid, s 210(1).
56 ibid, s 210(1)(b); s. 210(9).
57 ibid, s 210(9)(a).
the donor, as well as the amount that was donated.\textsuperscript{58} However, where this information is not known by the candidate, the amount of the election donation need only be listed as an "anonymous donation".\textsuperscript{59} The problems with continuing to allow such anonymous donations are discussed in the next section, in conjunction with "faceless" donations to the political parties.

While gaps undoubtedly exist in the controls that apply to candidate spending, the rules do seem to have worked to restrain candidate spending. The limited levels of such spending in New Zealand may also be attributed to the fact that this sort of expenditure does not really have that great an impact on the election outcome. Most voters cast their ballot for individual candidates on the basis of that candidate's party affiliation, so it has long been the case that the campaign spending by the political parties has had the greater importance in the electoral race. The centrality of the party vote under MMP has exacerbated this fact. Also, while determined candidates can (and sometimes undoubtedly do) exceed the $20,000 limit on their election expenses, they run a real risk if they should be caught doing so. Any candidate found to have knowingly exceeded the spending limit on their campaign will have committed a "corrupt practice",\textsuperscript{60} which carries a punishment of up to one year in prison. In addition, any person found guilty of a corrupt practice is automatically entered into the "corrupt practices list",\textsuperscript{61} and is thus disqualified from

\textsuperscript{58} ibid, s 210(1)(b).
\textsuperscript{59} ibid, s 210(1)(c).
\textsuperscript{60} ibid, s 213(3)(a).
\textsuperscript{61} ibid, s 100.
voting or holding public office for 3 years.\textsuperscript{62} This is a heavy sanction, and it works to make candidates cautious about too obviously flouting the rules.

- **Regulation of Campaign Spending by “Third Parties”**.

In addition to the individual candidates and their political parties, any developed democratic system will also contain a plethora of “third parties” with an interest in the outcome of the election, and who may thus wish to take some part in the campaign battle.\textsuperscript{63} The participation of such third parties in New Zealand’s electoral processes is regulated by sections 221 and 221A of the Electoral Act 1993. Section 221 prohibits the publication of any advertisement which “is used or appears to be used to promote or procure the election of a constituency candidate”,\textsuperscript{64} or “encourages or persuades or appears to encourage or persuade voters to vote for a party”,\textsuperscript{65} unless the publication is authorised in writing by the candidate or party concerned, and the advertisement contains a statement setting out the “true name” and the address of the person for whom or at whose direction it is published.\textsuperscript{66} Section 221A covers any advertisement “relating to an election.” The publication of such an advertisement also requires a statement identifying

\textsuperscript{62} \textit{ibid}, s 80(e). This was the fate of the Labour Party MP, Reg Boorman, following the case of \textit{Re Wairarapa Election Petition} [1988] 2 NZLR 74.


\textsuperscript{64} Electoral Act 1993, s.221(1)(a).

\textsuperscript{65} \textit{ibid}, s.221(1)(b).

\textsuperscript{66} \textit{ibid}, s.221(2)(a) and (b).
the “true name” of the person for whom or at whose direction it is published,67 but unlike advertisements advocating support for a particular candidate or party, it does not require any formal authorisation from any person.

The effect of section 221 is to stop any third party from undertaking unilaterally any advertising which has the effect of advocating support for a particular primary participant contesting the election. It also works to limit such third party spending, even if the way in which it does so is not immediately apparent. As the definitions of “election activity” in sections 210 and 214B of the Act extend to cover those activities (in this case advertising) carried out with the party or candidate’s authority, the consequence of a primary participant authorising a third party’s expenditure on advertising is that this spending is then counted as a part of the primary participant’s election expenses. Third party advertising which advocates support for a candidate or party can therefore never extend, at least in theory, beyond the expenditure limits imposed on the primary participants in the electoral contest.

The authorisation requirement contained in section 221 effectively precludes third parties from running “parallel campaigns” promoting candidates and parties they wish to see in office. However, authorisation is only required where an advertisement is “used to promote or procure the election of a constituency candidate” or “encourages or persuades or appears to encourage or persuade voters to vote for a party”. Clearly an advertisement which “expressly advocates” the election of a particular candidate or party — by saying something like “Vote for X” — will fall within these terms. However, beyond clear cases such as these, it is very difficult to define in advance the kind of message that will

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67 ibid., s.221A(1).
“appear[] to encourage or persuade” voters to support some party.68 In particular, the status of “issue advocacy” type advertisements, which do not refer specifically to any candidate or party but rather promote a particular position in respect of a public policy issue which also features in some primary participant’s election campaign, is particularly problematic. The discussion of section 221 by both Parliament’s Electoral Law Committee in their report into the 1993 General Election,69 and the Department of Justice’s advice in 1995 to the Committee, indicates their belief that such issue advocacy is excluded from the ambit section 221.70 If this interpretation is correct, then it leaves a wide loophole in the limits on third party spending. Any third party who wishes to influence an election can evade the restrictions imposed by section 221 by simply casting their advertising messages in terms of the “issues” involved, rather than directly exhorting voters to vote for a particular party or candidate.

However, any such advertising will still fall under the ambit of section 221A. This was enacted in 1995 following a recommendation by Parliament’s Electoral Law Committee that “negative” advertising — advertising which attacked a party or candidate

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70 It should also be noted that s.6 of the New Zealand Bill of Rights Act 1990 requires that “Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.”
rather than promote their rivals — should be regulated.71 Prior to 1995, the assumption was that such negative advertising fell outside section 221, and could therefore be published anonymously.72 Given this lacuna in the law, the Committee was concerned that voters should be able to evaluate the credibility of advertisements in light of who is paying for them. The Committee also recognised the administrative nightmare which would ensue if those wishing to advertise against a candidate or party had to seek the consent of all their competitors in order to comply with the law, not to mention the difficulty in apportioning the costs between them, or in actually getting all competitors to agree to authorise the advertisement. They also considered a less burdensome procedure in respect of negative advertising would help compensate for the limits that section 221 placed on expressive rights in respect of “positive” express advocacy. The term “relating to an election” was correspondingly enacted by section 221A, and it covers not only negative advertising, but also issue advocacy which is aimed at influencing an election.

Because third parties are under no obligation to disclose the amount they spend on any election related advertising, it is difficult to gauge just how much of this type of expenditure occurs in each election campaign. Certainly each election has seen some advertising by third parties — in particular, employer and union groups — on issues that one or another political party has been closely aligned with, and which may therefore

71 Supra n. 69.

72 But see DPP v Luft [1977] AC 962 (House of Lords' ruling that a U.K. section similar to s.221 covered advertisements attacking a particular candidate as this had the inevitable consequence of encouraging voters to vote for one of that candidate's rivals). However, the definition of "election programme" in s.69 of the Broadcasting Act 1989 uses words which expressly indicate that both positive and negative advertising are covered by that section, suggesting that the legislature did intend only positive express advocacy be covered by section 221.
help to promote that party’s election campaign. But that being said, such spending has not appeared to have had any real impact on any recent election campaign. This fact may also be due to the lack of any real controls on the making of donations to political parties, which allows third parties seeking to influence the electoral process to funnel direct financial aid to the parties, rather than having to spend their resources independently.

However, if this situation should change — for instance, were the donation process to be made more transparent (as is discussed in the next section) — the issue of third party spending in the New Zealand context may become more pressing. The loopholes that exist in the limits on these types of expenditure (in particular, the failure of the limits to cover “issue advocacy”) means that, should some electoral participant wish to do so, they could completely evade the existing limits on campaign spending. That being said, it is debatable whether the present veto granted to the political parties and individual candidates over advertising that appears to support their campaign can be justified. As a third party must gain authorisation before advertising on behalf of a party or candidate, and because the cost of any such advertising is then carved out of the beneficiary’s own expenses, the form of the advertisement is likely to be largely dictated by the authoriser. Therefore, the existing limits on third party spending are both too loose (in that they may be easily evaded in their entirety), and too rigid (in that, where they do apply, they give the primary participants too much control over the content of a third party’s message).

- Broadcasting Regulation
New Zealand’s regulatory schema places heavy restrictions on the use of the broadcast media (radio and television) for political ends. All broadcast media in New Zealand, whether privately owned or State run, is regulated by the Broadcasting Act 1989. This legislation prohibits any broadcaster from permitting the broadcast of any “election programme” at any time. An election programme is defined as one which encourages or persuades (or appears to encourage or persuade) the voters to vote for (or not to vote for) some individual candidate or political party, or which advocates support for or opposes a candidate or political party, or which notifies that a meeting is to be held in conjunction with an election.\footnote{Broadcasting Act 1989, s69(1).} There are only a few specific exceptions made to this blanket ban on using the broadcast media for political ends\footnote{The ban does not apply to “the broadcasting, in relation to an election, of news or comment or of current affairs programmes”; ibid., s 70(3). The official bodies charged with overseeing New Zealand’s electoral process may place an election programme “for the purposes of the Electoral Act 1993”, and broadcasters may carry “non-partisan advertisements” as a community service; see ibid., s70(2)(b).}, of which the most important for current purposes are those allowing the political parties and individual candidates limited usage of the broadcast media during an election campaign.

To begin with, the State provides restricted access to the broadcasting resource in the period prior to an election to qualifying political parties. This access takes two forms. First of all, the government makes a grant of money to be distributed to the political parties for the purpose of buying broadcasting time. Since 1990, this “broadcasting allocation” has amounted to a total of a little over NZ$2 million. In addition to this money, the Electoral Commission (which since 1996 has been charged with allocating the
broadcasting resource) invites all broadcasters to voluntarily contribute time for the broadcasting of election programmes.

Once the total available amount of the broadcasting resource (money plus donated time) is known, the Electoral Commission then divides it between all of the qualifying political parties that have requested a share.\(^7\)

The allocation criteria involves such factors as: the number of votes the party attracted at the last election; the number of votes gained by the party in any by-election held since the last general election; any other indications of public support for that political party (such as results of public opinion polls and the number of persons who are members of that political party); as well as the general "need to provide a fair opportunity for each political party ... to convey its policies to the public ... ."\(^7\)

Clearly, the application of such a complex formula will generate disputes, and following every allocation decision by the Commission there have been complaints by some of the parties that they have been unfairly treated.\(^7\)

These complaints are sharpened by the fact that the Electoral Act 1993 requires that a representative of each of the two largest political parties take part in the allocation decision,\(^7\) while the minor political parties are given no direct voice in the process.\(^7\)

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\(^7\) Electoral Act 1993, s 8(4).

\(^7\) Although the Commission is required to "consult" with both the broadcasters and the political parties before making its allocation decision. See ibid., ss 75A, 76.
Irrespective of the fairness of this allocation process (a question considered in the final part of this chapter), it provides the political parties with their only means of direct access to the broadcast media. A political party may only broadcast an election programme using time allocated to it, or time purchased with money allocated to it, by the Commission. While the costs of producing an election programme may be paid for from the broadcasting allocation, they do not have to be. Instead, parties may spend their own funds on such production costs, although this expenditure will still count as an “election expense” to be counted towards the total that party may spend on its general election advertising.

An additional exception to the blanket ban on using the broadcast media for political advertising is made for individual candidates. A candidate may purchase time to broadcast an election programme, so long as it relates solely to the promotion of their candidacy, and it is broadcast in the three months prior to the election occurring. However, any such spending by a candidate will count as an “election expense”, and must therefore be counted towards the maximum of $20,000 that she may spend on advertising her campaign.

The general effect of these rules is to radically restrict the electoral participants’ direct access to the broadcast media. A political party is limited to the use of whatever time and

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80 Broadcasting Act 1989, s70(2)(a). In addition, the State-owned television and radio network is required to screen the opening and closing addresses of qualifying political parties; ibid., s 77A(3).

81 Money provided as a part of the broadcasting allocation may only be used for the purpose of making and screening an election program; ibid., s 74(1)(a).

82 However, the value of any broadcasting resources received by a party does not count towards that party’s maximum election expenses. ibid., s 214B(1)
money is allocated to it by the Electoral Commission. While individual candidates remain free to use the broadcast media to advertise (albeit subject to strict conditions) the $20,000 spending cap on their campaigns effectively restricts their access to the purchase of a few spots on local radio stations. Third parties may only use the broadcast media to run general, issue focussed ads which do not expressly advocate support for or opposition to any party, or even appear to encourage voters to support or not support a particular party or candidate.83

3: Problems with New Zealand’s System of Campaign Funding Regulation — and Proposed Solutions

It should be noted at the outset of this section that the regulation of campaign expenditures by New Zealand’s electoral participants appears generally to be operating satisfactorily at the present time. Those competing for election have (by-and-large) abided by the spending limits, although a few accusations of over-spending by individual candidates do arise after each election. However, there are reasons to be cautious about attributing this success to any intrinsic superiority of New Zealand’s regulatory schema, as there are several rather large loopholes in the law that could be taken advantage of by any electoral participant who wished to avoid the controls on spending. But because of the “low-cost” campaign environment in New Zealand, and because the use of the most

83 Exactly how the provisions of the Broadcasting Act 1989 fit together with s. 221 of the Electoral Act 1993 is not clear. Section 221 permits the broadcasting of an advertisement which “appears to encourage or persuade voters to vote for a party”, so long as this advertisement is approved by the party concerned. However, under the definition in s.69 of the Broadcasting Act, such an advertisement would automatically become an “election programme”, which s.70 absolutely prohibits a broadcaster from screening (even if approved of by the political party.)
expensive communication medium is largely put off limits to the electoral contestants, there is no great incentive for them to spend amounts in excess of that allowed by the legislation.

That being so, the issues which have caused the most concern of late centre around how the electoral contestants gain their election funds, rather than how those funds are then used in the campaign. Any person, organisation, or company may give as much money as they wish to any electoral contestant. A contributor need not be a citizen, nor even a resident of New Zealand. In this context, concerns have been expressed about the ease with which large scale donors can fund the campaigns of election participants without even having to disclose their identity to the voting public. This is the problem of so-called “faceless” donations to the political parties.84 Also, there have been complaints that the State does not do enough to support New Zealand’s political parties in their election campaigns, and thus leaves the parties overly reliant on private funding sources. These arguments have been raised specifically in relation to the broadcasting allocation, as well as in the wider context of taxpayer funding for political parties.85

This section considers each of these problems in turn. It also examines a number of proposals advanced in recent years to deal with the problems outlined. However, whether any of these suggestions will be translated into actual reforms is unclear at the time of writing, as Parliament’s Justice and Electoral Committee currently is undertaking a full


Given this fact, it is only possible to give something of an overview of the different reform proposals, and provide some arguments as to which ones ought to be adopted in the future, rather than make a definite prediction as to the route that future changes will follow.

**Donation Disclosure and the Problem of “Faceless” Contributions**

The rules which require the public disclosure of the identity of large-scale donors to the political parties (and, to a lesser extent, individual candidates) suffer from two major flaws. First of all, the disclosure regime contained in the *Electoral Act 1993* is retroactive in its operation. While a political party is required to file annually a report detailing all the reportable donations it has received in the previous year, it does not have to make any special disclosure of its funding sources prior to an election. Therefore, voters are left in the dark during the election campaign as to who is supporting the parties financially in their bid to win public power. Indeed, the voting public may not learn of the identities of a party’s donors for some considerable time after the election, as a political party’s annual donation report is not due until the end of April in the following year. For example, the public had to wait until some 9 months after the latest general election in late July, 2002 to find out who the parties’ major financial supporters were. The more

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87 These disclosure requirements are discussed supra, nn37-42 and accompanying text. For a more complete discussion of the issue, see Andrew Geddis, “Hide Behind The Targets, In Front Of All The People We Serve: New Zealand Election Law and the Problem of ‘Faceless’ Donations”, (2001) 12 *Public Law Review* 51, 54-56.
frequent disclosure of the identity of major donors to a political party, especially in the immediate run-up to an election, would be more desirable.

The second shortcoming of the public disclosure regime is the loophole created by allowing candidates and political parties to continue to accept donations that come from “faceless” sources. Prior to the passage of the Electoral Act 1993, the secrecy surrounding the process by which the political parties gain their campaign funds had provoked public suspicions, most notoriously in the case of a 1990 television documentary alleging that members of the then Labour Government were exchanging favourable policy outcomes for political donations.88 The Electoral Act’s disclosure requirements were supposed to allay such concerns. However, the political parties have taken full advantage of gaps in this legislative framework. For example, according to the parties’ reports for the 1999 election year, both of New Zealand’s largest political parties received almost three-quarters of their declared funding from sources that it was impossible for the voting public to identify. These “faceless” donations included both direct contributions from an “anonymous” source, as well as indirect contributions that were made to the party via some conduit organisation (most notably the “Free Enterprise Trust”).

Such donations would not be so troubling if the candidates and political parties genuinely had no idea who was funding their campaigns, as there would then be no danger that they would feel any resulting obligation to any particular individual or

88 It should be noted that these allegations were never actually proven, and resulted in the broadcaster concerned settling several defamation actions brought by the implicated Ministers. See, e.g., Prebble v TVNZ Ltd [1994] 3 NZLR 1 (PC).
interest group. It is clear, however, that the donations received were not faceless in this sense. Rather, as media reports revealed, fundraisers for the political parties actively advise potential donors how to avoid being publicly identified as contributing to the party. In so doing the parties and their financial supporters may trample on the spirit of the law, but they remain within its technical bounds.

Therefore, it has become abundantly clear that the donor disclosure regime contained in the Electoral Act 1993 is hopelessly flawed. It allows any donor who wishes to avoid publicly disclosing her identity to do so, and it even permits the intended recipient of a political donation to advise a donor on how to achieve this result — a state of affairs that makes something of a mockery of having any sort of public disclosure regime for political donations. In 2002 Parliament responded to these shortcomings by inserting a definition of “anonymous” into the Electoral Act. According to this new provision, a donation may forthwith only be listed as coming from an anonymous source if neither the candidates of a party, nor the persons involved in the administration of the affairs of a party, know who has made the donation.

While this new definition seeks to close one of the more egregious loopholes in the disclosure regime, it seems likely that it will do little to stem the flow of faceless


91 Electoral Amendment Act 2002, s3(4) (inserting a new definition of “anonymous” into the Electoral Act 1993, s 3(1)).
donations to the political parties. To begin with, the definition of “anonymous” remains silent as to the level of knowledge the law requires of the recipient of a contribution. It is therefore unclear as to whether the law requires “actual” knowledge on the part of a recipient of which donor has made which particular donation\textsuperscript{92} — in which case it would seem to do little in practice to extend the existent disclosure regime — or whether it imposes some new test of “constructive” knowledge on the party and its officials. Simply put, if some donor promises a party official that she will make a substantial donation to the party’s campaign, and then a few days later a bank cheque arrives at the party offices, does the party official “know” that this contribution comes from the particular donor? Also, the new provision does nothing to prevent the making of faceless donations to a political party through a conduit body (such as a trust). In such a case the law still only requires the party to list the conduit body as the source of the donation, even if the recipient knows that the trust has been used as a conduit.

For reasons such as these it appears likely that any test intended to distinguish between genuinely faceless donations and faux-anonymous contributions to a candidate or political party will prove to be impractical in application, as well as carrying unacceptable costs in terms of enforcement.\textsuperscript{93} In light of these problems, a more fruitful route for New Zealand to follow is that taken by Australia, Canada, the United States, and (lately) the United Kingdom, which all ban political parties from receiving anonymous donations.

\textsuperscript{92} The Select Committee report on which this definition was based recommended that the statute require that the identity of the donor be “actually unknown to the person receiving the donation” for it to be considered anonymous. Report of the Electoral Law Committee, \textit{Interim Report on the Inquiry Into the 1996 General Election}, AJHR I.17A, 76 (April, 1998) (emphasis added).

\textsuperscript{93} Geddis, “Hide Behind the Targets”, \textit{supra} n87, at 55-56
donations greater than a certain, nominal amount. This was the approach recommended in the Royal Commission’s 1986 report, which also called for preventing the use of “front” organisations to avoid the disclosure requirements.\(^94\) A majority of the members of Parliament’s Justice and Electoral Committee have also indicated their “support [for] significant changes to the law governing donations to political parties”,\(^95\) while preferring to subject the matter to further study before making concrete recommendations for reform. It therefore remains to be seen if these words will be translated into practice in time for the 2005 general election.

- **The “Fairness” of the Allocation of Broadcasting Resources**

A second, and perennial, problem with the supply of campaign funds to New Zealand’s political parties is the perceived unfairness of the means by which the broadcasting resources are allocated amongst the political parties.\(^96\) Whilst complaints have been made ever since the present allocation system was introduced in 1990,\(^97\) allegations that the distribution is inequitable have been sharpened by the move from a two party, First Past the Post voting system to a more diverse electoral climate under MMP. Two separate, inconsistent complaints have been raised by the political parties. First of all, the smaller parties argue that Labour and National receive a disproportionate amount of the allocated

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\(^94\) *Towards A Better Democracy*, supra n 11, at 189-90.

\(^95\) *Inquiry into the 1999 General Election*, supra n 86, at 104.

\(^96\) *ibid.*, at 116-122.

\(^97\) Corban, “Funding Political Party Broadcasting”, *supra n 77*, at 272-282.
resources, given that they already enjoy more attention from the “free” news media.\textsuperscript{98}

Reinforcing this charge is the fact that representatives of these two parties take an active decision making role in the allocation process,\textsuperscript{99} whilst all the other parties only get “consulted” on the allocation.\textsuperscript{100}

While the smaller political parties are united in calling for the representatives of the Labour and National Parties to be removed from the allocation process,\textsuperscript{101} it comes as no shock that these two parties oppose such a move on the grounds that it is “important for there to be political input in the process in order to ensure that the allocation procedures are fair and to allow the views of the political parties (which are the ‘prime users’) to be taken into account.”\textsuperscript{102} Of course, given that section 76 of the Broadcasting Act already requires that all the political parties be consulted before any allocation decision is made, it is hard to see the continuing presence of representatives from the largest two parties on the allocation committee as anything but an entrenchment of their position as dominant political actors. Nevertheless, as Labour and National at present control 79 of the 120 seats in Parliament, the minor parties face an uphill battle in any bid to change the governing legislation.

\textsuperscript{98}ibid., at 273. For the 2002 election, the Labour and National parties were each allocated $615,000 – a total of almost 60 percent of the $2.081 million distributed.

\textsuperscript{99}Broadcasting Act 1989, s 8(4).

\textsuperscript{100}ibid., s 76.

\textsuperscript{101}Report of the MMP Review Committee, Inquiry into the Review of MMP (August, 2001), 55. The Electoral Commission has also twice recommended to Parliamentary select committees that the political party representatives be removed from the allocation process.

\textsuperscript{102}ibid., at 57
In contrast, the established political parties complain that the ease with which a party can qualify for a share of the allocation of the broadcasting resource has enabled fringe organisations to siphon it away from more “serious” electoral contenders. Presently, all that is required for a party to gain a share of the allocation is that it either be registered, or deemed to be running candidates in 5 or more seats, at least 3 months prior to Parliament being dissolved for an election.\textsuperscript{103} In the wake of the introduction of MMP, the number of parties meeting this threshold has increased markedly – rising from 7 in 1993, to 22 in 1999, before falling back to 14 in 2002. Yet in this period the amount of the broadcasting resource to be distributed has remained static,\textsuperscript{104} even as the costs of accessing it have increased due to rising advertising rates. Thus “serious” electoral contenders have had to share a progressively shrinking pie with an increased number of fringe parties, whose chance of actual electoral success is negligible.

The call from the established political parties to tighten the qualifying criteria for access to the resource is met with a claim that the current allocation formula provides a means by which emerging political movements can have some chance of attracting public support. Therefore, the underlying problem would really seem to be that the current allocation criteria contained in section 75 of the \textit{Broadcasting Act} 1989 tries to be all things to all people. It rewards the larger parties for their greater levels of public support, whilst also seeking to “provide a fair opportunity for each political party … to convey its policies to the public”.\textsuperscript{105} Any decision as to who should get how much of the resource is...

\textsuperscript{103} Broadcasting Act 1989, s 75(1)(a).

\textsuperscript{104} The Broadcasting Act 1989, s 74(2) requires that the same amount of money be appropriated for the Broadcasting Allocation as was appropriated at the previous election, unless Parliament expressly legislates for an increase. Parliament has not done so in the past decade.
thus torn between contradictory goals. While complaints about the allocation of the broadcasting resource will probably never be completely eliminated, they would probably be reduced if the criteria were more clearly designed to serve one or the other goal, rather than both simultaneously.

When it comes to proposals to increase the overall amount of the parties’ access to the broadcasting resource, three main ideas have been floated. One is to retain the present restrictions on the parties purchasing broadcast time, but with a concomitant increase in the amount of the broadcasting allocation granted to the parties to buy this time. The second is to continue with the current levels of allocation, but to also allow the parties to spend their own financial resources on buying access to the resource, up to a cap set at some percentage above the largest allocation given out under the present allocation scheme. During the 1990s Parliament considered two bills that included such a provision. However, the measure was dropped before the legislation was passed into law, and there appear to be no present moves to resurrect it. The third proposal is to remove the present restrictions on the purchase of broadcasting time by the political parties, and instead allow this to become just another “election expense” to be covered by the general spending limit on such activities. The money currently allocated for purchasing broadcasting time would then be distributed amongst the political parties as a

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105 These ideas were considered in greater depth by the MMP Review Committee, Inquiry into the Review of MMP, supra n86, at 61

106 The proposals were contained in the Broadcasting Amendment Bill (No 2) 1993 (to allow spending up to an amount 50 percent greater than the largest allocation given to any political party), and the Broadcasting Amendment Bill 1995 (to allow spending up to an amount 25 percent greater than the largest allocation given to any political party).
part of a more general system of taxpayer funding, to be spent by the parties on whatever election activities they desire.

The present situation at is that the broadcasting allocation is the subject of near universal condemnation. Even the Electoral Commission, charged with conducting the allocation process, has stated that it "considers the current system of allocating time and funds to the political parties for election broadcasting is unfair and unsatisfactory, and that the procedures required by the [Broadcasting] Act are very time-consuming, cumbersome, and expensive." 107 Quite what ought to be done about the process is, of course, a different question, and one on which there is much less agreement. Not surprisingly, the political parties each tend to support the proposal that is most propitious to their own electoral needs, and so no consensus (or even majority support) has coalesced behind any one approach. As such, it is difficult to predict with any great certainty what steps may be taken to fix a system that is widely agreed to be broken, without any real concordance on what the real problem with the system is, and therefore how it should be reformed.

• Increased Taxpayer Funding For Election Campaigns

In addition to problems that have emerged with the distribution of broadcasting resources to the political parties, there have also been general claims that the New Zealand State fails to give adequate support to the election campaigns of the political parties, thereby leaving the parties too reliant on sources of private funding. More specifically, it has also been suggested that any move to ban faceless donations will necessitate the introduction

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107 Cited in Inquiry into the Review of MMP, supra n101, at 60.
of some form of state (or taxpayer) funding for the parties’ election campaigns. Should donors be forced to disclose their identities, this argument goes, they will no longer give substantial political contributions, thus harming the democratic process by depriving the political parties of the funds they need to run their election campaigns.

I have my doubts as to the strength of this last claim. After all, it is one that is belied by the experience of other countries — such as Australia, Canada, and the United States — that require the public disclosure of the identity of donors to political parties. Yet the parties in each of these countries have found that donors are still prepared to give them significant sums, as “money contributes to and flows to power and the monied have learned to live with disclosure.” That being so, there are several other arguments that may support a move towards greater taxpayer funding for election campaigns in New Zealand. The broadcasting allocation provides a precedent, so the introduction of further taxpayer funding for election campaigns would involve the expansion of an existing feature of New Zealand’s election law, rather than the importation of a completely exogenous concept. In addition, most of the Western democracies with which New

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109 Towards A Better Democracy, supra n 1, at 217.


New Zealand compares itself provide some form of taxpayer assistance to their political parties' election campaigns. So perhaps the taxpayer funding of election campaigns forms some kind of international democratic “best practice” to which New Zealand also should conform.

This was the position taken by the Royal Commission in its 1986 report, when it supported the introduction of such a scheme on the grounds that it would help to offset any fundraising advantage that “rich” (or established) parties presently enjoy over “poor” (or newly emerging) parties. To put the point in another way, it believed taxpayer funding would ensure that all the parties have access to adequate resources with which to communicate their policy positions to the electorate, thus helping to create an electoral environment where voters are able to cast their ballot in a fully informed manner. However, it is debatable whether this is a problem that really needs addressing in New Zealand. The evidence is rather that the political parties are at present able to raise enough money to run campaigns that adequately communicate their messages to the voters. Even though the amounts that the various parties spend in each election campaign are quite divergent, there seems little to indicate that this fact has had any negative impact on the overall competitiveness of the electoral process.

112 Towards a Better Democracy, supra n11, at 216-217. The Commission’s recommendation was not included in the Electoral Act 1993. For an account of why this was so see K. Jackson and A. McRobie, New Zealand Adopts Proportional Representation, supra n23, at 138-156.


114 See Geddis, “Towards a System of Taxpayer Funding for New Zealand Elections?”, supra n110, 191-93.
In addition, any potential benefits to be gained from a taxpayer funding scheme must be balanced against the risk that such a move will reduce the opportunities for the supporters or members of a political party to become involved in the operations of that party. Rather than having to deal with ideologically motivated supporters or party members, who can be troublesome and demanding, a political party’s hierarchy may prefer to use taxpayer funding to hire others to accomplish the tasks that volunteer participants would usually perform.\(^\text{115}\) The possibly alienating effects of funding the political parties with taxpayer money may pose a particular risk in New Zealand, where the levels of membership in the political parties are already reported to be in steep decline.\(^\text{116}\) Also, public concerns have been expressed already that the MMP voting system, with its closed “party lists”, puts too much control over the political parties in the hands of the party hierarchy. In this context there are reasons to be cautious about instituting a form of taxpayer funding that does not encourage the direct, voluntary participation of party members and supporters, lest such a move exacerbate the already

\(^{115}\) This concern underpinned the recommendation of the Committee for Standards in Public Life that no direct state funding be provided to the political parties in the United Kingdom; see Fifth Report of the Committee on Standards in Public Life, *The Funding of Political Parties In Britain*, (October, 1998), 92, para 7.21.

existing perception that the political parties are becoming increasingly insulated from their grassroots supporters.\footnote{117} As a matter of public policy, therefore, the issue of wider taxpayer funding for the political parties’ election campaigns is even more contested than is the issue of allocating the broadcasting resource. To begin with, there is a sharp ideological division between the political parties as to whether such a step is either necessary or desirable. The parties on the “right” all oppose any additional state funding beyond that provided for the purchase of broadcast time.\footnote{118} Those parties on the “left” do support some sort of taxpayer funding for election campaigns, but there seems little consensus amongst them on how such a scheme should be structured.\footnote{119} About all that seems agreed upon by these latter parties is that the funding should be distributed in a bulk grant after an election has been held, with the amount to be given to each party assessed in line with some dollars-per-vote formula. As such, the Australian model of taxpayer funding provides the basic framework from which each party has adapted its own particular favourite scheme.\footnote{120}

As indicated above, there are reasons to doubt whether the direct, bulk funding of the political parties with taxpayer money represents a sound policy move in the New Zealand context. Instead, an indirect system of taxpayer funding through tax rebates on

\footnote{117} Compare with \textit{Towards a Better Democracy}, \textit{supra} n11, at 216-217, para. 8.121.
\footnote{118} \textit{Inquiry into the Review of MMP}, \textit{supra} n101, at 62.
\footnote{119} \textit{ibid.}, at 62.
\footnote{120} This was also the recommendation of the Royal Commission on the Electoral System. See \textit{Towards A Better Democracy}, \textit{supra} n11, at 226-228.
small, individual donations might be a better approach. However, the point may be a moot one given the current lack of agreement amongst the parties as to whether any sort of further taxpayer funding is a good idea. Here again it is necessary to wait for Parliament’s Justice and Electoral Committee to complete its review of the issue, and for the Government to respond to this, before the likely future prospects for any sort of general taxpayer funding scheme for the political parties’ election campaigns becomes known.